



Planning Department

TOWN OF ACTON
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MEMORANDUM

To: Community Preservation Committee **Date:** December 9, 2013

From: Roland Bartl, AICP, Planning Director *R. B.*

Subject: **2014 Recapture of Unspent Previous Years' Project Appropriations**

To formalize the recapture of prior year project funds (as done in previous years), I recommend that the Community Preservation Committee vote to direct the Town Finance Department to move the remaining account balances from the following prior year projects to the general Community Preservation Fund or, subject to confirmatory Town Meeting appropriation, to a specific Set-Aside Fund balance, as outlined below. See also attached back-up sheets.

Account	Project	Year	Category	Remaining Balance	Notes
184 #18F 4/11	Asa Parlin House	2011	HP	\$79,963.58	A few weeks ago the Selectmen unanimously voted to have the Town Manager and Dean C. to pursue the disposal of the building (they voted the building as surplus property). This project is completed.
0101 #17I-4/05	Antique Fire Apparatus	2005	HP	\$536.82	This project is completed.
0160 #27D-4/09	Historic Streetscape	2009	HP	\$611.82	The project is completed.
0162 #27F-4/09	Town Cemeteries	2009	HP	\$14,000.00	The appropriation for this project has expired. <u>Make-up needed for 2009 HP spending: Transfer \$13,698.02 to historic set-aside.</u>
02319 #32C 4/13	Wildflower Boardwalk	2013	OS	\$6,444.45	This project is completed.
0171 #24D-4/10	Community Housing	2010	CH	\$50,000.00	The appropriation for this project has expired.
Total Recapture Amount				\$151,556.67	

CH – Community Housing

HP – Historic Preservation

OS – Open Space

R - Recreation

Checking for statutory minimum spending requirement:

2005 – Historic Preservation:

Original appropriations for HP		\$225,150.00
Min. 10% HP appropriation requirement	-	<u>\$107,433.00</u>
Original HP appropriation above 10% min.		\$117,717.00
2007 Recapture amount	-	<u>\$3,800.00</u>
		\$113,917.00
2014 Recapture amount (Antique Fire Apparatus)	-	<u>\$536.28</u>
Resulting HP appropriation above 10% min.		\$113,380.72

- The 2005 HP appropriation remains above 10% after recapture. There is no need to create a set-aside fund.

2009 – Historic Preservation:

Original appropriations for HP		\$119,075.00
Min. 10% HP appropriation requirement	-	<u>\$118,161.20</u>
Original HP appropriation above 10% min.		\$913.80
2014 Recapture amount (Historic Streetscape)	-	<u>\$611.82</u>
		\$301.98
2014 Recapture amount (Town Cemeteries)	-	<u>\$14,000.00</u>
Resulting HP appropriation below 10% min.		-\$13,698.02

- The 2009 HP appropriation falls below 10% after recapture. A **\$13,698.02 set-aside is required.**

2010 – Community Housing:

Original appropriations for CH		\$300,000.00
Min. 10% CH appropriation requirement	-	<u>\$96,925.96</u>
Original CH appropriation above 10% min.		\$203,074.04
2014 Recapture amount (Community Housing Program Fund)	-	<u>\$50,000.00</u>
Resulting CH appropriation above 10% min.		\$153,074.04

- The 2010 CH appropriation remains above 10% after recapture. There is no need to create a set-aside fund.

2011 – Historic Preservation:

Original appropriations for HP		\$648,209.00
Min. 10% HP appropriation requirement	-	<u>\$94,975.21</u>
Original HP appropriation above 10% min.		\$553,233.79
2014 Recapture amount (Asa Parlin)	-	<u>\$79,963.58</u>
Resulting HP appropriation above 10% min.		\$473,270.21

- The 2011 HP appropriation remains above 10% after recapture. There is no need to create a set-aside fund.

2013 – Open Space:

Original appropriations for OS		\$324,000.00
Min. 10% OS appropriation requirement	-	<u>\$99,258.47</u>
Original OS appropriation above 10% min.		\$224,741.53
2014 Recapture amount (Wildflower Boardwalk)	-	<u>\$6,444.45</u>

Resulting OS appropriation above 10% min. \$218,297.08

- The 2013 OS appropriation remains above 10% after recapture. There is no need to create a set-aside fund.

Correspondences regarding remaining fund balances:

A. Items recommended for recapture.

Account: 184 #18F 4/11 **Project:** Asa Parlin House **Recapture amount:** \$79,963.58

Update: *We recommend the remaining funds for the Asa Parlin House be recaptured. The response given (please see below) from the Director of Municipal Properties states the study was completed in October, 2012. Since this time, The Selectmen voted to pursue disposal of the building and voted the building as surplus property. CPA funds cannot be used for demolition of historic structures therefore the project is essentially completed.*

Email Correspondence:

From: Dean Charter
Sent: Wednesday, November 20, 2013 4:05 PM
To: Kristen Domurad-Guichard
Cc: Community Preservation Committee; Roland Bartl; Historical Commission
Subject: RE: CPA Project - Asa Parlin House Preservation and Restoration

Kristen,

This project was proposed by the Historical Commission, and thus I have copied them on my response.

The CPC placed a condition on the appropriation that \$20K be spent on a study of the building, and after the study was completed, the HC was to come back to the Selectmen and the CPC for authorization to proceed with the physical work. The study was completed in October, 2012, and based on the study the HC requested approval for additional funds to implement the plans. The Selectmen refused to sanction forwarding the proposal to the CPC for the FY 2014 grant round. A few weeks ago the Selectmen unanimously voted to have the Town Manager and me pursue the disposal of the building (they voted the building as surplus property). No request for funds was submitted for the FY 2015 grant round.

I would have a hard time justifying using the remaining funds to demolish the non-historic portions of the building with the understanding that it would be a down payment on removing all portions of the building in the long run, but I think that would be a discussion point with the original proponents and the CPC.

As the building is within the Historic District and the HDC would have to grant us a Certificate of Appropriateness to perform any work, I think the process will be lengthy. I met with the HDC last month about the process, and have provided copies of the study to them. I plan on taking this up again with the HDC in the New Year.

Regards,
Dean

From: Kristen Domurad-Guichard
Sent: Wednesday, November 20, 2013 9:30 AM
To: Dean Charter
Cc: Community Preservation Committee; Roland Bartl
Subject: CPA Project - Asa Parlin House Preservation and Restoration
Hi Dean,

In 2011 Town Meeting appropriated \$100,000 of CPA funding for:

“Asa Parlin House Preservation and Restoration

For a structural evaluation, the architectural design, the demolition of the non-historic additions, and the work required to preserve and mothball the original building.

As of today the account shows a remaining balance of \$79,963.58.

Please advise me by December 20, 2013 if the project is completed, in which case the remaining balance will be returned to the general CPA fund to support new projects.

If the project is not completed, and you wish to maintain the account, please provide for the Community Preservation Committee's consideration a brief summary on the status of the project documenting why the account should remain open, including the recent progress made and the anticipated completion date.

Thank you,
Kristen

Kristen Domurad-Guichard
Assistant Town Planner
Town of Acton
472 Main Street
Acton, MA 01720
P: 978-929-6631

Account: 0101 #171-4/05 **Project:** Antique Fire Apparatus **Recapture amount:** \$536.82

Update: We recommend the remaining funds for the Antique Fire Apparatus be recaptured. The Fire Chief has submitted final invoices to complete the project and informed Planning Department staff that remaining funds can now be returned.

Account: 0160 #27D-4/09 **Project:** Historic Streetscape **Recapture amount:** \$611.82
Update: We recommend the remaining funds for Historic Streetscape be recaptured.

Email Correspondence:

From: Dean Charter
Sent: Wednesday, November 20, 2013 3:43 PM
To: Kristen Domurad-Guichard
Cc: Community Preservation Committee; Roland Bartl
Subject: RE: CPA Project - Historic Streetscape Restoration

Hi Kristen,

As you can see from the expenditures, we got a number of trees planted, and then this Article was superseded with a new appropriation for the same purpose in April, 2013. We have already begun spending from that appropriation. At this point the \$611.82 can be returned to the fund and the books can be closed out.

Thanks

Dean

From: Kristen Domurad-Guichard
Sent: Wednesday, November 20, 2013 9:20 AM
To: Dean Charter
Cc: Community Preservation Committee; Roland Bartl
Subject: CPA Project - Historic Streetscape Restoration

Hi Dean,

In 2009 Town Meeting appropriated \$10,000 of CPA funding for:

"D. Historic Streetscape Restoration - Shade Trees in Historic Districts

This project seeks to restore the historic streetscapes of the Acton Center, South Acton, and West Acton Historic Districts over a period of several years. The recommended \$10,000 appropriation will fund the planting of between 30 and 40 new public shade trees on publicly owned land, street rights of way, or on adjacent private properties as provided by Massachusetts General Law Chapter 87 where no public space is available. Care will be exercised to avoid planting trees in locations where they would interfere with future sidewalks. The Town anticipates an in-kind contribution for labor in the vicinity of \$20,000."

As of today the account shows a remaining balance of \$611.82, showing no change from last year. Attached is your response from our inquiry in 2012.

Please advise me by December 20, 2013 if the project is completed or discontinued, in which case the remaining balance will be returned to the general CPA fund to support new projects.

If the project is not completed, and you wish to maintain the account, please provide for the Community Preservation Committee's consideration a brief summary on the status of the project documenting why the account should remain open, including the recent progress made and the anticipated completion date.

Thank you,
Kristen

Kristen Domurad-Guichard
Assistant Town Planner
Town of Acton
472 Main Street
Acton, MA 01720
P: 978-929-6631

Account: 0162 #27F-4/09 **Project:** Town Cemeteries **Recapture amount:** \$14,000.00

Update: We recommend the remaining funds for the Town Cemeteries be recaptured. This project expired in May 2012. Of these funds, \$13,698.02 must be turned back to the Historic Set-Aside fund for 2009 spending appropriation requirements.

Email Correspondence:

Hi Roland,

We discussed this at our meeting and would like to proceed forward with it. We do need direction on how to proceed forward with it. I have been without a computer for the past couple of weeks so sorry for the delay.

On 12/12/11, Roland Bartl<rbartl@acton-ma.gov> wrote:

Dear Members of the Acton Historical Commission:

In 2009 Town Meeting appropriated \$14,000 of CPA funding for:

"F. Town Cemeteries - National Register of Historic Places Listing

This item will help the Acton Historical Commission prepare nomination papers to be submitted to the National Park Service for the placement on the National Register of Historic Places of the Acton cemeteries: North Acton Cemetery on Carlisle Road, Woodlawn Cemetery on Concord Road, and Mount. Hope Cemetery on Central Street. National Register nomination of the cemeteries increases their profile, public knowledge of their historic value, and eligibility for State and Federal preservation grants when available. The \$14,000 project funding is recommended subject to favorable Massachusetts Historical Commission (MHC) findings of National Register eligibility of each cemetery. The Acton Historical Commission has already prepared and submitted draft eligibility statements currently under MHC review."

As of today the account shows a balance equal to the original appropriation: \$14,000.

Please advise me by January 6, 2012 if the project is completed or discontinued, in which case the remaining balance will be returned to the general CPA fund to support new projects. As a reminder, please note that the funding will automatically expire at the beginning of May 2012 if the project has not commenced (see Town Charter § 6-5; Lapse of Appropriations).

If the project is not completed or discontinued, and you wish to maintain the account, please provide for the Community Preservation Committee's consideration a brief summary on the status of the project documenting why the account should remain open, including the recent progress made and the anticipated completion date.

Thank you

Roland Bartl, AICP
Planning Director
472 Main Street
Acton, MA 01720
(978) 929-6631

Account: 02319 #32C 4/13 **Project:** Wildflower Boardwalk **Recapture amount:** \$6,444.45

Update: We recommend the remaining funds for the Wildflower Boardwalk at the Acton Arboretum be recaptured. The Natural Resources Department has completed the project.

Email Correspondence:



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
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Natural Resources

December 5, 2013

To: Kristen Domurad-Guichard, Planning Dept.

From : Bettina Abe, Natural Resources Dept.

Re: 2013 Acton Arboretum Wildflower Boardwalk CPA Grant Money

Dear Kristen:

Our grant request for the above-mentioned CPA project was for \$24,000.

Our project is complete and has come in under-budget.

We have paid for the new boardwalk and it cost \$17,155.55.

Therefore we are returning \$6,444.45.

Thank you.

Sincerely yours,

Bettina

Bettina Abe



Natural Resources Assistant (Part-Time)
Town of Acton Natural Resources Department
472 Main Street
Acton, MA 01720

Email: babe@acton-ma.gov

Website: www.acton-ma.gov

Account: 0171 #24D-4/10 **Project:** Community Housing Program Fund
Recapture amount: \$50,000.00

Update: After consultation with Town Counsel, we recommend the funds for the Community Housing Program Fund be recaptured. This project expired in May 2013. Of these funds, \$50,000.00 must be turned back.

Email Correspondence:

From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Monday, December 09, 2013 12:20 PM
To: Roland Bartl; Kristen Domurad-Guichard
Cc: Mina Makarious
Subject: Acton/CPA - Potential Lapse of CPA Appropriation to the Community Housing Program Fund

Roland,

Mina passed along Kristen's question as to whether a prior appropriation of CPA funds to ACHC for the Community Housing Program Fund has lapsed where the funds were not actually moved to the ACHC fund or used within three years and one month from the appropriation. At this time, the appropriated amount remains in the CPA fund, encumbered by the prior appropriation.

Town Charter

The Town Charter provides as follows:

SECTION 6 - 5 Lapse of Appropriations

Unless another provision is specifically made in the town meeting vote on any special warrant article which authorizes a commitment of town funds, whether by appropriation, transfer or otherwise, the said authorization shall lapse three years and one month following the effective date of such vote. Authorization for any capital project shall not lapse if such project shall have commenced within such period. The town meeting may, prior to the expiration of any such term of years, provide for an extension of the time during which the funds shall continue to be available for the purpose specified.

Kristen provided links to the full Town Meeting Article and Summary (<http://www.acton-ma.gov/DocumentCenter/Home/View/889>) and Town Meeting Motion and Vote (<http://www.acton-ma.gov/DocumentCenter/Home/View/887>). At the time the funds were appropriated, there was no provision specifically made in the town meeting vote on the CPA warrant article that the appropriation was not subject to lapse under Charter § 6-5. Nor has an extension of the appropriation been expressly voted by Town Meeting.

CPA Bylaw

The Town's CPA Bylaw, Chapter S, contains no provision that arguably gives the appropriation continuing life absent language in a particular Town meeting vote or article.

ACHC's Enabling Act

ACHC's enabling legislation, Chapter 143 of the Acts of 1996, authorizes ACHC to accept and hold funds appropriated by the Town; however, that legislation does not provide an exception from the Charter's lapse provision (emphasis added):

- Section 2(g): [ACHC's powers include...] **With the approval of the board of selectmen, to receive and hold fund appropriated by the town** and other funds, property, labor and other things of value from any source, public or private, by gift, grant, bequest, loan or otherwise, either absolutely or in trust, **and to expend or utilize the same on behalf of the corporation for any of its purposes** or

to act as an agent or conduit in administering or disbursing funds or financial or other aid from any source; provided, however, that all revenues collected or received by the board of directors in connection with its activities, investments or transactions shall be expended **only with approval of the board of selectmen of the town of Acton**;

- Section 4: **The town of Acton may appropriate funds for carrying out, by said board, of the purposes as set forth herein.** Any appropriation therefor may be raised by said town by taxation or otherwise. At least annually, the board of directors shall cause independent audits to be made of the books and records of said board, which annual audits shall be filed with the board of selectmen of said town.

Purpose of the Appropriation

The Motion voted to "appropriate or set aside for later appropriation" the listed CPC funds, including the \$50,000 for the Community Housing Program Fund. The Article divided the appropriation into "Set Aside" and "Spending Appropriations." The \$50,000 was in the "Spending" category.

The Article's Summary stated that the appropriation was to "replenish the existing Community Housing Program Fund." This purpose suggests that the \$50,000 was to make up for money already spent by ACHC from prior appropriations to the fund. If that is the case, the CPC and ACHC may take the position that the appropriation did not lapse and that the encumbered funds can be transferred from the CPA fund to ACHC at this time with the approval of the Board of Selectmen under Section 2(g) of ACHC's enabling legislation.

That is an aggressive reading of the applicable Town Meeting vote, ACHC's enabling legislation and the Town Charter provision. (Compare G.L. c. 44, § 53E1/2, providing that revolving funds require annual auditing and appropriation). It also discounts the provision in the Summary that "[a]ll amounts are 'up-to' spending limits. Savings, if any, will be available for future appropriations."

Recommendation for Future CPA Appropriations to the Community Housing Program Fund

Regardless of how ACHC, the CPC and the BOS resolve the issue as to the prior appropriation, to avoid a recurrence of this issue I recommend that the following (or similar) language be added to future versions of the CPA Article in which there is to be an appropriation to the Community Housing Program Fund:

Provided further pursuant to Town Charter Section 6-5 that the appropriation to the Community Housing Program Fund shall not lapse three years and one month following the effective date of the vote on this article, and that this appropriation and all prior appropriations to the Community Housing Program Fund shall continue to be available for the purpose specified until expended for that purpose or until the CPC recommends and Town Meeting votes to rescind the appropriation of any unspent funds appropriated for this purpose.

Please let me know if you have any questions.

Steve

Stephen D. Anderson
ANDERSON & KREIGER LLP